

Rule 5.1. ~~Responsibilities of a partner or supervisory lawyer~~ Responsibilities of Partners, Managers, and Supervisory Lawyers.

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(c)(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(c)(2) The lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Paragraphs ~~Paragraph~~ (a) and (b) refer applies to lawyers who have supervisory managerial authority over the professional work of a firm ~~or legal department of a government agency~~. This includes members of a partnership ~~and~~ the shareholders in a law firm organized as a professional corporation and members of other associations authorized to practice law; lawyers having supervisory comparable managerial authority in ~~the a legal services organization or a~~ law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect

and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised. The responsibility for the firm's compliance with paragraph (a) resides with each partner, or other lawyer in the firm with comparable authority.

[2a] Utah's Comment [2] to this Rule differs from the ABA Model Rule's Comment [2]. The Model Rule Comment [2] might suggest the possibility that a firm could be in violation of the Rule without an individual or group of individuals also being in violation. Utah's Comment [2] makes clear that even though the concept of firm discipline is possible, a firm should not be responsible in the absence of individual culpability for a rule violation.

[3] ~~The Other~~ measures that may be required to fulfill the responsibility prescribed in ~~paragraphs paragraph~~ (a) ~~and (b)~~ can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and ~~occasional admonition~~ periodic review of compliance with the required systems ordinarily ~~might be sufficient~~ will suffice. In a large firm, or in practice situations in which ~~intensely~~ difficult ethical problems frequently arise, more elaborate ~~procedures~~ measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and ~~a lawyer having authority over the work of another~~ the partners may not assume that ~~the subordinate lawyer all lawyers associated with the firm~~ will inevitably conform to the Rules.

[4] Paragraph (c)(1) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other a-lawyer having comparable managerial authority in a law firm, as well as a lawyer who ~~having has~~ direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners ~~of a private firm~~ and lawyers with comparable authority have

at least indirect responsibility for all work being done by the firm, while a partner or  
manager in charge of a particular matter ordinarily also has ~~direct authority over~~  
supervisory responsibility for the work of other firm lawyers engaged in the matter.  
Appropriate remedial action by a partner or managing lawyer would depend on the  
immediacy of ~~the partner's~~ that lawyer's involvement and the seriousness of the  
misconduct. ~~The~~ A supervisor is required to intervene to prevent avoidable  
consequences of misconduct if the supervisor knows that the misconduct occurred.  
Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an  
opposing party in negotiation, the supervisor as well as the subordinate has a duty to  
correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation  
of paragraph (b) on the part of the supervisory lawyer even though it does not entail a  
violation of paragraph (c) because there was no direction, ratification or knowledge of  
the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability  
for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable  
civilly or criminally for another lawyer's conduct is a question of law beyond the scope of  
these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not  
alter the personal duty of each lawyer in a firm to abide by the Rules of Professional  
Conduct. See Rule 5.2(a).